

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Schools and Libraries Universal Service)	
)	CC Docket No. 02-6
Support Mechanism)	
)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.¹

I. INTRODUCTION AND SUMMARY

SBC supports the Commission's efforts to review the schools and libraries universal service support mechanism (e-rate program) to ensure that it achieves the goals of section 254 in a fair, efficient and effective manner. To meet this objective, the Commission should apply two fundamental principles as it considers whether and how to modify its e-rate rules and policies. First, the Commission should ensure that the rules are as clear, simple and flexible as possible. The existing e-rate rules already are complex, onerous and subject to continual modification, making it difficult and expensive for service providers and applicants to comply. Unnecessarily adding to that complexity will only undercut the goals of the e-rate program by making participation in the program difficult and diverting resources that could be used to meet the technological needs of schools and libraries to efforts to comply with costly and burdensome regulation.

¹ SBC Communications Inc. files these comments on behalf of itself and its operating company affiliates (collectively, "SBC") in response to the Commission's December 23, 2003, Second Further Notice of Proposed Rulemaking in the above-captioned docket. *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 26912 (2003) (*Second FNPRM*). Those affiliates are: Southwestern Bell Telephone Company LP; Nevada Bell Telephone Company; Pacific Bell Telephone Company; Illinois Bell Telephone Company; Indiana Bell Telephone Company; Michigan Bell Telephone Company; The Ohio Bell Telephone Company; Wisconsin Bell Telephone Company; and the Southern New England Telephone Company.

Second, the Commission should apportion responsibility and accountability for compliance with specific e-rate rules and requirements to the appropriate party (that is, the party with knowledge of or control over a particular requirement). Applicants, for example, control the competitive bidding process, and are the only parties that receive copies of all bids and thus have the records necessary to substantiate compliance with the competitive bidding rules. As such, it is they that should be primarily responsible for retaining records relating to competitive bids and certifying compliance with the e-rate rules. Service providers, in contrast, only have knowledge of and records relating to their own bids. If they do not win the bid, service providers have no way of knowing whether the applicant actually received e-rate funding. As a consequence, at most, service providers at most, should only be required to retain records relating to their own, winning bids.

Based on these principles, the Commission should take steps to improve the competitive bidding process to encourage more service providers to participate in the e-rate program. In particular, the Commission not only should retain the Form 470 process, which provides a useful tool for service providers to identify opportunities to bid on e-rate projects, but also, as Qwest proposes, require applicants to post an RFP on their website to provide additional information regarding those projects to interested bidders.² At the same time, the Commission should not require service providers to certify in each bid that their prices have been independently developed. Such a requirement would only increase service providers costs to address a “problem” that has not been shown to exist. Likewise, as noted above, the Commission should not require service providers to retain all records relating to bids on e-rate projects for five years; at most, service providers should be required to retain only those records relating to winning bids. The Commission also should not bar any entity that provides an applicant management support, technical assistance or consulting services from competing to provide eligible services to that applicant; such a prohibition would be overbroad and could prevent applicants from

² Qwest Comments at 8-9.

obtaining services from the most efficient and proficient provider. Finally, while SBC recognizes that random audits may be necessary to ensure program integrity, the Commission should limit service provider accountability only to those matters and functions within the service provider's control.³

II. THE COMMISSION SHOULD IMPROVE THE COMPETITIVE BIDDING PROCESS

The Commission should take certain steps to improve the competitive bidding process to encourage more service providers to bid on e-rate projects, and thus ensure that applicants receive the best and lowest bids possible. At the same time the Commission should not impose new, unnecessarily burdensome requirements that will only drive up costs with little, or no, benefits.

1. SBC agrees with Qwest that, to the extent an applicant issues RFPs for e-rate projects, they should be required to post the RFPs (on their website if they have one), and include the specific requirements that must be met by potential bidders.⁴ As Qwest aptly observes, potential bidders need detailed information regarding network requirements, equipment specifications, traffic configuration, and pricing options in order to compete effectively on an e-rate project. Requiring applicants to post an RFP with such information at the same time they file a Form 470 would provide an efficient, effective means for service providers to obtain the information they need, without imposing undue burdens on applicants.

At the same time, the Commission should not eliminate the Form 470 process, even for basic telecommunications services, as several parties propose.⁵ Even if, as is sometimes the

³ Although it does not address the issue here, for the reasons articulated in its opening comments, SBC urges the Commission to revise its policies and rules regarding the recovery of funds erroneously or improperly disbursed.

⁴ Qwest Comments at 8.

⁵ See, e.g., Ohio SchoolNet Commission Comments at 5 (Ohio SchoolNet Comments); New York City Dept. of Education Comments at 4-5. If the Commission eliminates the Form 470 process, the competitive bidding rule would be an empty requirement for those applicants that do not issue RFPs because service providers would have no way of knowing about potential e-rate projects.

case, a Form 470 does not provide sufficient information to prepare a bid, it does provide an efficient and effective means for prospective bidders to learn about potential bid opportunities. SBC, for example, routinely monitors the SLD website to review Form 470 filings and identify bid opportunities, including for basic telecommunications services. While the bid process could be improved by requiring applicants also to post RFPs with sufficient information to enable services providers to effectively prepare a competitive bid, the Commission should not eliminate the Form 470 process.

Based on the evident confusion regarding the Form 470 process for multiyear contracts,⁶ the Commission and SLD should clarify that applicants seeking services that are covered by a single, multiyear contract executed pursuant to a Form 470 in a prior year need not refile a Form 470 in subsequent years.⁷ SLD should highlight this rule in its outreach and education efforts, and thus simplify the process for those applicants that do not understand the existing rule.

2. The Commission should not require, as a condition of support, each service provider to certify that the prices in its bid were independently developed, as proposed in the *Second FNPRM*.⁸ Only two parties supported this proposal,⁹ but they offered no justification for such a requirement. SBC is not aware of any instances in which service providers have not developed prices independently. Consequently, there is no problem here for the Commission to solve. In this context, adopting a new certification requirement would only add to the complexity and cost

⁶ See, e.g., Ohio SchoolNet Comments at 4-5; State E-Rate Coordinators' Alliance Comments at 14.

⁷ Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470), OMB 3060-0806 at 4 (May 2003) ("Services that are covered by a **qualified existing contract** for all or part of the funding year do not require filing of Form 470, since you are not seeking bids for these services. A qualified existing contract is: a signed, written contract executed pursuant to the posting of a Form 470 in a previous funding year") (emphasis in original).

⁸ *Second FNPRM* at para. 66.

⁹ WiscNet Comments at 3; Kellogg & Sovereign Consulting Comments at 6.

of the competitive bidding process without any corresponding benefit.¹⁰ In any event, as the Commission previously recognized, detailed, e-rate procurement requirements are unnecessary because schools and libraries typically operate pursuant to state and local procurement rules and requirements designed to ensure integrity in the procurement process.¹¹

If the Commission nevertheless decides to adopt the proposed certification requirement, it should not apply to tariffed services. These services already are subject to close regulatory scrutiny, and thus are unlikely to be the product of illegal collusion with competitors. In addition, the Commission should simply add the certification to FCC Form 473, which all service providers must file every year, certifying that they will comply with the e-rate rules. Adding the certification to Form 473 would be far less onerous than requiring service providers to file a certification with each, and every bid.

3. The Commission also should not modify its rules to require service providers to retain all records relating to competitive bidding on e-rate projects for five years.¹² Applicants, not service providers, are responsible for engaging in competitive bidding and for demonstrating compliance with the competitive bidding rules.¹³ In addition, as the Pennsylvania Department of Education correctly points out, few vendors retain copies of losing bids over an extended period of time, if at all.¹⁴ As a consequence, requiring service providers to retain all records relating to competitive bids on e-rate projects would require them to expend enormous resources to develop

¹⁰ Some naively might claim that such a certification would impose no additional costs because it would simply require a signature attesting that bid prices were independently developed. However, before a service provider reasonably could make such a certification, it would have to establish internal procedures to monitor the bid development process to ensure that prices were independently developed. These additional procedures would add to the time, and thus the cost, to respond to any requests for bids.

¹¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, at para. 482 (1997) (*Universal Service Order*).

¹² *Second FNPRM* at para. 66.

¹³ 47 C.F.R. § 54.504(a); *Universal Service Order*, 12 FCC Rcd at 9029-30, para. 481 (requiring applicants to select the most cost-effective bid).

¹⁴ Pennsylvania Dept. of Education Comments at 6.

a document retention system for thousands of bid responses, even where the service provider lost the bid or e-rate funding never was provided and the documents they do retain likely will not disclose whether the applicant complied with the competitive bidding rules. For example, if a service provider does not win a bid, it will have no way of knowing whether the procurement was conducted in compliance with the competitive bidding rules. Consequently, to the extent the Commission has concerns about the integrity of the competitive bidding process, it should focus any regulation on applicants, and, at most, require service providers to retain records relating to their own, winning bids.

III. THE COMMISSION SHOULD NOT BAR ENTITIES THAT PROVIDE MANAGEMENT SUPPORT AND OTHER SERVICES FROM COMPETING TO PROVIDE ELIGIBLE SERVICES.

The Commission should not categorically bar any entity that provides an applicant management support, technical assistance or consulting services from competing to provide eligible services to that applicant. Such a prohibition would be overbroad and, as E-Rate Central notes, likely would deprive small and medium size applicants of technical assistance because they often cannot afford to hire consultants.¹⁵ It also could prevent applicants from obtaining services from the most efficient and proficient provider. In any event, it is not the delivery of consultative services in itself that poses a problem. Rather, it is the failure of applicants to rigorously comply with the competitive bidding rules, which require applicants to seek competitive bids for supported services, provide sufficiently specific information to prospective bidders to enable them to submit realistic bids, and honestly portray the status of an RFP. These rules, rigorously applied, are sufficient to ensure the integrity of the competitive bidding process, while still providing schools and vendors the flexibility necessary to meet the needs of applicants in a complex, fast moving technology marketplace.

¹⁵ E-Rate Central Comments at 8.

IV. SBC DOES NOT OBJECT TO RETAINING BILLING RECORDS FOR FIVE YEARS OR RANDOM COMPLIANCE AUDITS

SBC does not object to the Commission's proposal to require service providers to retain billing records relating to the delivery of discounted services for five years. SBC already retains copies of customers' bills and customer service records in its billing system. SBC notes, however, that these records are PDF files; not data files that can be manipulated. Thus, while these records can be used to document services, prices and discounts provided to customers, a manual review of the records still is necessary to determine, for example, whether services were eligible for funding and discounts were properly applied.

SBC also recognizes the need for random audits of service providers to assure program integrity. However, it agrees with the New York City Department of Education that the Commission should be clear and specific as to the types of documents that service providers must retain, as well as the areas that could be the subject of future audits.¹⁶ In addition, the Commission should recognize that there are limits to the types of matters for which a service provider can be held accountable in any compliance audit or review. SBC notes in this regard that service providers can provide billing records and be held accountable, for example, for properly billing applicants for services, as well as for complying with other rules specifically applicable to service providers. But service providers do not have full knowledge of or exercise control over how an applicant actually uses telecommunications services (which determines eligibility for e-rate funding); rather, service providers must rely on applicants to identify the services that are eligible for funding. For example, SBC routinely makes a good faith effort to obtain assurance from applicants that services are eligible for funding.¹⁷ If SBC believes that services are not eligible for funding, it attempts to rectify the situation, but it has no authority to make a final determination regarding service eligibility. The Commission therefore cannot

¹⁶ New York City Dept. of Educ. Comments at 5.

¹⁷ When SBC receives a copy of the funding commitment decision letter from SLD, it asks the applicant to itemize, in writing, the services and associated telephone numbers for which they are seeking discounts.

expect a service provider to document such things as service eligibility in a compliance audit or review.

V. CONCLUSION

For the reasons discussed above, the Commission should modify its e-rate rules as outlined herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Weyatta E. Wureh, hereby certify that on this 12th day of April, 2004, copies of the foregoing Reply Comments of SBC Communications, Inc. were served by hand delivery upon the following:

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